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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 22, and 52

[FAC 2005-85; FAR Case 2015-013; Item II; Docket No. 2015-0013, Sequence No. 1]

RIN 9000-AN01

Federal Acquisition Regulation; Further Amendments to Equal Employment Opportunity

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13672, entitled, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," and a final rule issued by the Department of Labor (DOL).

DATES: Effective: **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Procurement Analyst, at 202-501-0650 for clarification of content. For information pertaining to status or

publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite FAC 2005-85, FAR Case 2015-013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published an interim rule in the Federal Register at 80 FR 19504 on April 10, 2015, to implement E.O. 13672, entitled, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," and a final rule issued by the Department of Labor at 41 CFR part 60. One public comment was submitted on the interim rule.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comment in the development of the final rule. The respondent had pointed to an error in a clause number in the interim rule publication. The error in FAR 52.213-4 was corrected in a Technical Amendment to Federal Acquisition Circular 2005-82 published in the Federal Register at 80 FR 26427 on May 7, 2015; therefore no further change to the interim rule is required.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 604, et seq. The FRFA is summarized as follows:

This rule is necessary to implement Executive Order (E.O.) 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," and a final rule issued by the DOL at 41 CFR part 60, which published in the Federal Register at 79 FR 72985 on December 09, 2014.

The interim rule, published on April 10, 2015, provides for a uniform policy to prohibit discrimination in Federal Government procurement by adding sexual orientation and gender identity to the prohibited bases of discrimination established by E.O. 11246.

No public comments were submitted in response to the initial regulatory flexibility analysis. Therefore, there were no issues to assess and no changes were made to the interim rule.

The rule will apply to all contracts and subcontracts subject to the Equal Opportunity FAR clause 52.222-26, which is prescribed for all contracts over \$10,000 that are not completely exempted. Using Fiscal Year 2013 Federal Procurement Data System and Federal Subcontract Reporting System data it is estimated that awards were made to 168,758 unique small businesses and that subcontracts were awarded to 61,816 unique small businesses. It is noted that there is likely a good measure of overlap between the unique small businesses that receive Federal awards and those that receive subcontract awards resulting in a likely overestimated total of 230,574.

Recordkeeping and reporting requirements involve regulatory familiarization and administrative costs associated with incorporating revised language into policies, instructions, notices to employees, and subcontracts. Other changes made by the rule, such as the prohibition of segregation of facilities are expected to have only minimal cost impacts as they do not require modification or construction of additional facilities, but rather to provide equal access to existing facilities. An analysis of estimated costs of the regulatory changes was prepared for the DOL final rule, which published in the Federal Register at 79 FR 72985 on December 09, 2014.

No significant alternatives to the rule were identified that would accomplish the stated objectives of the E.O. and the DOL implementing regulations. Every effort has been made to minimize the burdens imposed.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat. The Regulatory Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply; however, the information collection authorization is under the DOL regulations and is assigned OMB Control Number 1250-0009, entitled, "Prohibiting Discrimination Based on Sexual Orientation and Gender Identity by Contractors and

Subcontractors." This collection under 1250-0009 will be incorporated into 1250-0001 and 1250-0003.

List of Subjects in 48 CFR Parts 1, 22, and 52

Government procurement.

Dated: November 20, 2015.

William Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 1, 22, and 52, which was published in the Federal Register at 80 FR 19504 on April 10, 2015, is adopted as final without change.

[BILLING CODE 6820-EP]

[FR Doc. 2015-30457 Filed: 12/3/2015 8:45 am; Publication Date: 12/4/2015]